



Holland N. McTyeire, V

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*Via Hand Delivery*

December 15, 2003

Thomas Dorman  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

Re: In The Matter Of: Petition Of Doe Valley Utilities, Inc. For Determination As To  
Jurisdictional Status Of Doe Valley Utilities, Inc. And Additional Or Alternative  
Determinations, Case No. 2003-00360

Dear Mr. Dorman:

Enclosed for filing in the above-referenced matter are the original and ten copies of the Motion For Extension Of Time Of Doe Valley Real Estate Corporation, Memorandum Of Doe Valley Real Estate Corporation and Data Requests Of Doe Valley Real Estate Corporation To Doe Valley Utilities, Inc.

If you or your staff have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Holland N. McTyeire, V

HNM/jh  
Enclosures

cc: Shannon Keim  
James P. Panico  
Jeffrey A. McKenzie

LOU:837268.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

NOV 21 2003

In the Matter of:

PETITION OF DOE VALLEY UTILITIES, )	
INC. FOR DETERMINATION AS TO )	CASE NO. 2003-00360
JURISDICTIONAL STATUS OF DOE )	
VALLEY UTILITIES, INC. AND )	
ADDITIONAL OR ALTERNATIVE )	
DETERMINATIONS )	


\* \* \* \* \*

**MOTION FOR EXTENSION OF TIME OF  
DOE VALLEY REAL ESTATE CORPORATION**

Doe Valley Real Estate Corporation ("DVREC"), through counsel, respectfully Moves for a short Extension of Time to submit the Written Memorandum and Data Requests set forth in the Commission's November 21, 2003 Procedural Schedule. The grounds in support of DVREC's Motion for an Extension of Time are set forth below:

1. Counsel for DVREC and counsel for Doe Valley Utilities, Inc. agreed to a short extension of time for the submission of the Written Memorandum and Data Requests set forth by the Commission's November 21, 2003 Procedural Schedule.
2. The parties agreed to this short Extension of Time as they attempt to resolve other issues between them.
3. Counsel for the Commission was advised of this Extension of Time and had no objection.
4. No party to this matter will be prejudiced by this short Extension of Time.

Respectfully submitted,



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[hnm@gdm.com](mailto:hnm@gdm.com)

COUNSEL FOR DOE VALLEY  
REAL ESTATE CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Motion For Extension Of Time Of Doe Valley Real Estate Corporation was mailed, sufficient postage prepaid, to all parties of record this 15<sup>th</sup> day of December, 2003.

Randall Benham  
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Brandenburg, Kentucky 40108

Sharon Jones  
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Brandenburg, Kentucky 40108

Wayne Russell  
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Roy Den Benham  
5745 Olin Road  
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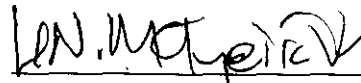
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COUNSEL FOR DOE VALLEY REAL  
ESTATE CORPORATION

LOU837502WORD

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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\*\*\* \*\*

**MEMORANDUM OF DOE VALLEY REAL ESTATE CORPORATION**

Doe Valley Real Estate Corporation ("DVREC"), though counsel, respectfully submits its Memorandum in Response to the Commission's November 21, 2003 Order and the Procedural Schedule attached thereto by which the Commission requested written memoranda from the parties regarding the appropriate scope of this proceeding which is set forth by DVREC below.

**I. IS PETITIONER, DOE VALLEY UTILITIES, INC. ("DVU") SUBJECT TO THE JURISDICTION OF THE COMMISSION?**

A. Interpretation of KRS 278.010(3)(d) regarding the provisions of "water to or for the public, for compensation."

1. What constitutes compensation. *See* the Commission Staff's June 4, 1997 Opinion regarding Phoenix Development Company relying upon *Drexelbrook Associates v. Pennsylvania Pub. Util. Comm'n*, 212 A.2d 237 (Pa. 1965) and *Pub. Serv. Comm'n of Maryland v. Howard Research and Development Corp.*, 314 A.2d 682 (Md. 1974) which concluded that compensation is still paid even if rental payments did not segregate or itemize utility payments.

2. What constitutes service to the public. Again, the June 4, 1997 Opinion from the Commission Staff regarding Phoenix Development Company Opinion concludes that, “[o]ne offers service to the ‘public’ . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity.” *North Carolina ex rel. Utilities Comm’n v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 109 (N.C. 1966).

B. Review of the Commission’s December 17, 1992 Order in Case No. 97-467 and its current applicability to DVU. The December 17, 1992 Order in Case No. 97-467 stated, in part, as follows:

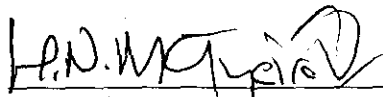
In addition to serving the residents of the subdivision, Doe Valley currently provides water service to six nonresidents of the subdivision who own property abutting it, five of whom are residential customers and one of which is an industrial customer. Homeowners associations which provide utility service only to their members as specifically set forth in their by-laws do not fall within the statutory definition of a utility and are thus not within the Commission’s jurisdiction. Determining whether service is “to the public” depends on how exclusive or restrictive the membership in the association is. The Association provides service to residents who are not Association members. The Association has not indicated it will amend its bylaws to include the six nonresidents of the subdivision as members of the association.

Case No. 97-467, Order, December 17, 1992, p. 3.

C. Factual information regarding DVU and its six non-resident customers as well as the Doe Valley Association, Inc. (the “POA”).

1. Factual review of the POA
2. Factual review of DVU.
3. Factual review of six non-resident customers.
3. Factual review of availability of service to any other persons outside of Doe Valley Subdivision.

Respectfully submitted,



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COUNSEL FOR DOE VALLEY  
REAL ESTATE CORPORATION

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I hereby certify that a copy of the Memorandum Of Doe Valley Real Estate Corporation  
was mailed, sufficient postage prepaid, to all parties of record this 15<sup>th</sup> day of December, 2003.

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LOU835166.1WORD

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**DATA REQUESTS OF  
DOE VALLEY REAL ESTATE CORPORATION  
TO DOE VALLEY UTILITIES, INC.**

Doe Valley Real Estate Corporation ("DVREC"), through counsel, submits the following  
Data Requests to Doe Valley Utilities, Inc. ("DVU").

**DATA REQUESTS**

**DATA REQUEST NO. 1.** How long has DVU provided service to the six customers not  
living in or residents of Doe Valley Subdivision?

**RESPONSE:**

**DATA REQUEST NO. 2.** Does any other utility currently have the ability to serve the six  
customers not living in or residents of Doe Valley Subdivision without the extension of any lines  
or other facilities?

**RESPONSE:**

**DATA REQUEST NO. 3.** When was the last of the six customers not living in or residents of Doe Valley Subdivision added to DVU's system?

**RESPONSE:**

**DATA REQUEST NO. 4.** Are other lots in the same area as the six customers not living in or residents of Doe Valley Subdivision? If any of those lots are developed would those residents obtain service from DVU?

**RESPONSE:**

**DATA REQUEST NO. 5.** Have all six customers not living in or residents of Doe Valley Subdivision agreed to receive service from Meade County Water District?

**RESPONSE:**

**DATA REQUEST NO. 6.** Please identify and provide copies of all materials or documents that have been provided to the six customers not living in or residents of Doe Valley Subdivision by DVU or the Doe Valley Association, Inc. (the "POA")?

**RESPONSE:**

**DATA REQUEST NO. 7.** Please identify and provide any agreements between DVU and the POA that relate to the provision of service by DVU.

**RESPONSE:**

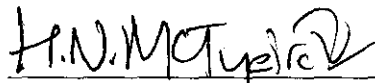
**DATA REQUEST NO. 8.** Please identify and provide the current By-Law and Articles of Incorporation of DVU and the POA that relate to the provision of service by DVU.

**RESPONSE:**

**DATA REQUEST NO. 9.** Please identify and provide any resolutions of DVU or the POA that relate to the provision of service by DVU.

**RESPONSE:**

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "H.N. McTyre", is written over a horizontal line.

Holland N. McTyre, V

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